

J&J Unit Wins Block Against Seller Of Counterfeit Implants

By **Hannah Albarazi**

Law360 (October 2, 2020, 10:01 PM EDT) -- An Illinois federal judge preliminarily enjoined a medical device company being sued by the Johnson & Johnson subsidiary Ethicon from using its trademark Friday, saying "essentially un rebutted evidence" indicates up to 6,000 allegedly counterfeit — and potentially contaminated — medical devices imported by the company may have already been implanted in patients.

"According to scientific analyses conducted at plaintiffs' direction, the counterfeits do not work, are bacterially contaminated, and pose serious risks to the health and lives of patients," U.S. District Judge Robert M. Dow Jr. wrote in his order Friday, requiring the Illinois company Advanced Inventory Management Inc., which does business as eSutures.com, to immediately stop selling, purchasing, distributing or otherwise using products with the Ethicon mark, real or fake.

Judge Dow said the evidence presented by Johnson & Johnson and its subsidiary Ethicon thus far shows that eSutures purchased, imported, and sold to hospitals and other medical providers across the U.S. over 7,000 counterfeit Ethicon medical devices.

"Even more troubling, the evidence disclosed to the court thus far suggests that up to 6,000 of those devices may have already been used in patients," Judge Dow wrote.

The judge also confirmed Friday a June order he issued to seize 1.27 million of eSutures' products, valued at over \$23 million. That seizure order is in Ethicon's trademark case, which overlaps with the U.S. Food and Drug Administration's Office of Criminal Investigation probe into eSutures. Judge Dow previously granted Ethicon a temporary restraining order, barring eSutures from using any of the J&J unit's marks, among other activities.

Ethicon says it began looking into alleged counterfeits of its products after receiving a complaint from a neurosurgeon at the University of Kentucky in May 2019. The trail eventually led it to India-based MedServe and to eSutures.

Ethicon's suit, first filed in June, accuses eSutures, its top officials and two employees of importing and selling dangerous counterfeit versions of Ethicon's Surgicel, LigaClip and SecureStrap products. The products include surgical clips and fixation devices that are meant to be left in a person's body after



Geoffrey Potter

surgery, according to the company's amended complaint.

Ethicon also accuses eSutures of obtaining non-counterfeit Ethicon products by bribing hospital employees at UChicago Medicine Ingalls Memorial Hospital, North Shore Surgical Center and Audubon Surgery Center, as well by purchasing devices stolen from hospitals, according to court documents unsealed Friday.

The Johnson & Johnson unit also accuses eSutures CEO Anthony Iaderosa Jr. of illicit drug use, running an illicit gambling operation and engaging in improper sexual conduct with employees, including an intern under the age of 21, according to court documents submitted by Ethicon.

eSutures says it's not a "fly-by-night counterfeiter" but rather a long-established business in the secondary market for surgical devices and that Ethicon is merely trying "to maim a competitor."

Judge Dow disagreed in his order Friday.

"Plaintiffs have presented the court with essentially un rebutted evidence that [Advanced Inventory Management]'s customers have received counterfeit Ethicon devices, as well as expired devices repackaged in counterfeit packaging. These devices are contaminated and dangerous. They could make patients sick or even kill them if used during surgery. Many of these devices appear to have already been implanted in patients," the judge wrote.

Judge Dow said that based on the evidence provided to the court, eSutures obtained allegedly counterfeit products from Medserve, its principal Pritamdas Arora and its U.S. distributor, as well as from a Turkish company called Medifelix.

The judge said the record includes evidence that eSutures' executives set up a shell company called Magellan Medical Supply F.Z.E. in the United Arab Emirates in 2019 so that AIM could import into the U.S. medical devices from "unregistered gray-market suppliers abroad, including Medserve."

Records, the judge said, show that eSutures and Medserve distributed expired Ethicon products that had been unsealed and repackaged by hand in Arora's Delhi apartment under unsanitary conditions.

Ethicon has demonstrated that it has more than a reasonable likelihood of success on their trademark infringement claims and that the infringement was willful, the judge said.

"Defendants simply have engaged in too many questionable practices and offered hopelessly incomplete and thoroughly unconvincing explanations for how those practices led to innocent rather than willful placement of thousands of counterfeit products in the market," the judge wrote. He also increased the defendants' bond to \$750,000 Friday.

Judge Dow stressed that "lives are at stake" and said "defendants have a lot to answer for, yet they have offered very little to assuage the Court's concerns. And, again, we are talking here about implantable medical devices, not watches or purses."

Judge Dow on Friday also rejected eSuture's bid to strike declarations by Patterson Belknap Webb & Tyler LLP partner Geoffrey Potter, one of the attorneys representing Ethicon and involved in investigating the alleged counterfeits. The judge rejected eSutures' argument that Potter's declarations should not be permitted because he is counsel to a party in the same case.

Counsel for the parties could not be immediately reached for comment on Friday.

Ethicon is represented by Bradley J. Andreozzi and Matthew M. Morrissey of Faegre Drinker Biddle & Reath LLP; and Geoffrey Potter, Aron Fischer, Timothy A. Waters and Joshua R. Stein of Patterson Belknap Webb & Tyler LLP.

eSutures and the individual defendants are represented by Alexander S. Vesselinovitch and Matthew T. Connelly of Freeborn & Peters LLP; and Michael S. Denniston, Gregory G. Marshall, Jack W. Selden, and Scarlett S. Nokes of Bradley Arant Boult Cummings LLP.

The case is Johnson & Johnson et al. v. Advanced Inventory Management Inc. et al., case number 1:20-cv-03471, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Celeste Bott, Kevin Penton and Dani Kass. Editing by Peter Rozovsky.

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